

Service Date: August 29, 2002

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

IN THE MATTER OF the Joint Petition of	)	
Mid-Rivers Telephone Cooperative, Inc.	)	UTILITY DIVISION
for Arbitration of Contract Negotiations with	)	
WWC Holding Co., Inc.	)	DOCKET NO. D2002.1.3
Pursuant to 47 U.S.C. § 252	)	ORDER NO. 6397b

**FINAL ORDER**

On May 29, 2002, Mid-Rivers Telephone Cooperative, Inc. ("Mid-Rivers") and Western Wireless Holding Co., Inc. ("Western Wireless") filed a Joint Petition for Approval of Negotiated Interconnection Agreement and Interconnection Agreement with the Montana Public Service Commission.

On June 12, 2002, the Commission issued a Notice of Application and Opportunity to Intervene and Comment, giving public notice of the requirements that the Commission must approve the Agreement unless it finds the Agreement discriminates against other telecommunications carriers not parties to the agreement, or is not consistent with the public interest, convenience and necessity. The notice stated that no public hearing was contemplated unless requested by an interested party by June 21, 2002. The notice further stated that interested persons could submit limited comments on whether the agreements met these requirements no later than July 2, 2002. No hearing was been requested and no comments or requests for intervention were received.

The Agreement submitted for approval in this proceeding was negotiated voluntarily by the parties and thus must be reviewed according to the provisions in 47 U.S.C. § 252(e)(2)(A). Section 252(e)(4) of the 1996 Act provides that a negotiated agreement submitted for a state commission's approval must be approved or rejected within 90 days or it will be deemed approved. Commission approval or rejection according to the standards set forth in the 1996 Act must issue by August 27, 2002, 90 days following the submission of the Agreement for Commission approval.

The United States Congress enacted the Telecommunications Act of 1996 to encourage competition in the telecommunications industry. Congress gave responsibility for much of the implementation of the 1996 Act to the states, to be handled by the state agency with regulatory control over telecommunications carriers. *See generally*, the Telecommunications Act of 1996, Pub.L. No. 104-104, 110 Stat. 56 (*amending scattered sections of the Communications Act of 1934*, 47 U.S.C. §§ 151, *et seq.*). The Montana Public Service Commission is the state agency charged with regulating telecommunications carriers in Montana and properly exercises jurisdiction in this Docket pursuant to Title 69, Chapter 3, MCA.

Section 252(e)(2)(A) prescribes the grounds for rejection of an agreement reached by voluntary negotiation:

- (2) GROUNDS FOR REJECTION. – The State commission may only reject –
  - (A) an agreement (or any portion thereof) adopted by negotiation under [47 U.S.C. § 252(a)] if it finds that
    - (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
    - (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity[.]

Notwithstanding the limited grounds for rejection in 47 U.S.C. § 252(e)(2)(A), the Commission's authority is preserved in § 252(e)(3) to establish or enforce other requirements of Montana law in its review of arbitrated or negotiated agreements, including requiring compliance with state telecommunications service quality standards or requirements. Such compliance is subject to § 253 of the 1996 Act that does not permit states to impose any statutes, regulations, or legal requirements that prohibit or have the effect of prohibiting market entry.

A voluntarily negotiated agreement need not comply with standards set forth in §§ 251(b) and (c). 47 U.S.C. §§ 251(b), 252(c) and 252(a)(1) of the Act permit parties to agree to rates, terms and conditions for interconnection that may not be deemed just, reasonable and nondiscriminatory, and which are not determined according to the pricing standards included in § 252(c) of the Act, as would be required in the case of arbitrated rates set by the Commission.

By approving this Agreement, the Commission does not intend to imply that it approves of all the terms and conditions included in the Agreement and makes no findings herein on the appropriateness of many of the terms and conditions. Our interpretation of the 1996 Act is that §§ 252(a) and (c) prevent the Commission from addressing such issues in this proceeding.

No comments have been received that indicate the Agreement does not comply with federal law as cited above or with state telecommunications requirements. The Montana Consumer Counsel, who represents the consumers of the State of Montana, has not intervened in this approval proceeding, and has not filed comments to indicate that any portion of the Agreement is not consistent with the public interest, convenience and necessity. There have been no objections raised that the Agreement discriminates improperly or is not consistent with the public interest, convenience and necessity.

The Commission finds that the terms in the Agreement appear to conform to the standards required by the Act and should be approved. In approving this Agreement, the Commission is guided by provisions in state and federal law that have been enacted to encourage the development of competitive telecommunications markets. Section 69-3-802, MCA, for example, states that it is the policy of the State of Montana to encourage competition in the telecommunications industry and to provide for an orderly transition to a competitive market environment.

Any provision or term of this Agreement that is in conflict with the law, whether or not specifically addressed by the Commission, is rejected as a matter of law and not in the public interest.

Adequate public notice and an opportunity to be heard has been provided to all interested parties in this Docket, as required by the Montana Administrative Procedure Act, Title 2, Chapter 4, MCA.

THEREFORE, based upon the foregoing, it is ORDERED that the agreement of the parties submitted to this Commission for approval pursuant to the 1996 Act is approved.

DONE AND DATED this 27th day of August, by a vote of 5 to 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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GARY FELAND, Chairman

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JAY STOVALL, Vice Chairman

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BOB ANDERSON, Commissioner

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MATT BRAINARD, Commissioner

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BOB ROWE, Commissioner

ATTEST:

Rhonda J. Simmons  
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.